

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HARRY J. WILLIBY,
Plaintiff,

v.

MARK ZUCKERBERG, et al.,
Defendants.

Case No.18-cv-06295-JD

**ORDER RE IFP APPLICATION AND
TRO/INJUNCTION MOTIONS**

Re: Dkt. Nos. 2, 3, 4

Pro se plaintiff Williby has applied to proceed in forma pauperis. Dkt. No. 4. The request is denied. The complaint is dismissed, and all pending TRO and injunction motions are denied.

In reviewing an application to proceed in forma pauperis, courts may dismiss a case sua sponte if the party applying for in forma pauperis status files a frivolous action, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). To make the determination under Section 1915(e)(2)(B), courts assess whether there is an arguable factual and legal basis for the asserted wrong, “however inartfully pleaded.” *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984) (internal quote omitted); *see also Williams v. Madrid*, 609 F. App’x 421 (9th Cir. 2015).


The complaint is dismissed because the First Amendment claim is not based on any state action and purports to sue a business that is not a government entity. *Hudgens v. N. L. R. B.*, 424 U.S. 507, 513 (1976). Facebook’s policies for moderating posts, including those relating to elections, do not constitute state action. Dkt. No. 1 ¶¶ 14-15. In the absence of a cognizable legal claim, the TRO and injunction motions are denied.

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Plaintiff may file an amended complaint by **November 12, 2018**. Failure to amend by that date will result in dismissal of this case with prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

Dated: October 22, 2018



JAMES DONATO
United States District Judge